



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 17072/2022**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: YES

**SIGNATURE:** [Redacted Signature]

**DATE: 28/09/2023**

In the matter between:

**MUCHENJE, LAZARUS**

First Applicant

**MUCHENJE, JANET**

Second Applicant

and

**INVESTEC BANK LTD**  
(Registration no. 169/004763/06)

Respondent

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**LEAVE TO APPEAL JUDGMENT**

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**SKOSANA AJ**

[1] Pursuant to my judgment, the applicant ("Investec") has sought leave to appeal to the Supreme Court of Appeal (SCA), alternatively to the Full Court of this Division. The parties have agreed that there are only two crisp issues raised in this application, namely, whether or not a further cancellation notice in terms of section 129(3) of the National Credit Act 34 of 2005 was required and whether or not the reinstatement of the home loan agreement is legally justified.

[2] The applicant contended that the issue regarding the necessity of a section 129(3) notice after a judgment is *res nova* while the respondent countered that it has been settled by the judgment of **ABSA Bank**<sup>1</sup>. In my view, the issue was not canvassed *stricto sensu* in that judgment and may therefore well be *res nova*.

[3] However, that is not sufficient on its own as a ground for granting leave to appeal in the first place and in the second, leave to appeal to the SCA. Even the provisions of section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013, broad as they are, do not in my view encompass such ground. First, there are no conflicting judgments. This much was conceded by counsel for Investec. Second, I find no persuasive ground that may lead to the alteration of the stance of this court and therefore no compelling reason why the appeal should be heard.

[4] On the second issue relating to reinstatement, I am still convinced that payment was made on behalf of and for the benefit of the respondents and such

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<sup>1</sup> **ABSA v Bank Ltd v De Villiers** 2009 (5) SA 40 (C) paras 12-14; see also **ABSA Bank Ltd v Havenga** 2010 (5) SA 533 (GP) at 537C-D

payment was accepted by Investec. Paragraphs 26 and 27 of **Mostert** case<sup>2</sup> do not, in my view, assist Investec. On the contrary, they appear to support the respondents' contentions

[5] In the circumstances, I make the following order:

1. The application for leave to appeal is dismissed with costs.



DT SKOSANA  
Acting Judge of the High Court

**APPERANCES**

Applicants' counsel:

Applicants' attorneys:

Respondent's counsel:

1<sup>st</sup> Respondent's attorneys:

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<sup>2</sup> Mostert v First Rand Bank 2018 (4) SA 443 (SCA)